

THE STATE OF TEXAS

RESOLUTION
INTERLOCAL AGREEMENT
CITY OF LAVON
COMMISSIONERS COURT

COUNTY OF COLLIN

On **September 28, 2004**, the Commissioners Court of Collin County, Texas, met in **regular session** with the following members present and participating, to wit:

Ron Harris
Phyllis Cole
Jerry Hoagland
Joe Jaynes
Jack Hatchell

County Judge, Presiding
Commissioner, Precinct 1
Commissioner, Precinct 2
Commissioner, Precinct 3
Commissioner, precinct 4

During such session the court considered a request approving the adoption of the attached resolution authorizing an Interlocal Agreement with the City of Lavon relating to the Heritage Development (formerly known as the "Bear Creek Development") located within the City; authorizing the execution of the Interlocal Agreement and making findings relating to the subject.

WHEREAS, the entire corporate territory of the City is located within Collin County and the City is a constituent city of Collin County; and

WHEREAS, the City Council of the City, on June 3, 2004 adopted Resolution No. 2004-06-1, defined herein as the "Plan Resolution", in which it adopted its Modernization and Development Plan for the City, herein defined as the "Plan"; and

WHEREAS, the Plan Resolution and the Plan require and contemplate that the County and the City will enter into an Interlocal Agreement as an essential part of the Plan; and

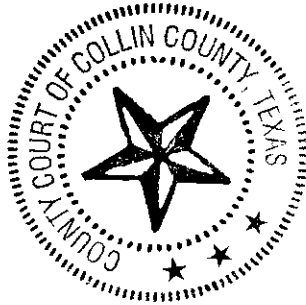
WHEREAS, the Commissioners Court has determined that the Plan and the Interlocal Agreement are favorable to the County and that it is in the best interests of the County that it join the City in implementing the Plan by authorizing the Interlocal Agreement; and

WHEREAS, the meeting at which this Order is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended; therefore

BE IT ORDERED BY THE COMMISSIONERS COURT OF COLLIN COUNTY:

- Section 1. The findings recited in the preambles hereto are hereby incorporated herein as the official findings of the Commissioners Court.
- Section 2. The Commissioners Court hereby approves and authorizes the Interlocal Agreement in substantially the form and substance attached hereto and incorporated herein by this reference. The County Judge is hereby authorized and directed to execute such agreement on behalf of Collin County. The County Clerk is hereby authorized and directed to attest to such signature and to affix the seal of the County to such document.
- Section 3. This Order shall take effect immediately upon its passage.

PASSED AND ADOPTED on the 28th day of September, 2004.





Ron Harris, County Judge



Phyllis Cole, Precinct 1



Jerry Hoagland, Precinct 2




Joe Jarner, Precinct 3



Jack Hatchell, Precinct 4

ATTEST:



Brenda Taylor, Ex-Officio Clerk
Commissioners' Court
Collin County, T E X A S

Kim Sheldon

From: Hutchison, Ray [rhutchison@velaw.com]
Sent: Wednesday, September 15, 2004 3:50 PM
To: Kim Sheldon; mjjones@lavonweb.net; andy@messerlawfirm.com; brendamcdonald@verizon.net
Cc: ike.shupe@hughesluce.com; fhosey@petrohunt.com; schindm@hughesluce.com; venturm@hughesluce.com; Melton, Julie; Marsh, Lila; Brooks, Ben A., III
Subject: City/County Interlocal Agreement

Kim, Mike, Andy, & Brenda:

Today, I talked with Commissioner Hoagland regarding approval by the Commissioners of the proposed City of Lavon/Collin County Interlocal Agreement and he asked me to send copies of necessary documents to Kim (an Order and the proposed Interlocal Agreement) to set it for agenda action by the Court.

Attached to this e-mail are copies of the proposed "Order" for the Court (which can be disregarded by Mike), a proposed "Ordinance" for the City Council (which can be disregarded by Kim), and a copy of the proposed final version of the Interlocal Agreement.

Kim, Jerry asked that I ask you to post the Order and Contract for ~~executive session~~ court briefing, followed by action posting upon return to open session. Whenever you can post it for consideration, please call or e-mail me and I will attend to brief the Court.

Mike, with Andy and Brenda's approval the Ordinance and contract are ready for posting for City Council action.

Thanks, and call [214.220.7922] if you have any questions.

Ray Hutchison

9/15/2004

ORDER NO. _____

AN ORDER APPROVING AND AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN COLLIN COUNTY AND THE CITY OF LAVON RELATING TO THE HERITAGE DEVELOPMENT (FORMERLY KNOWN AS THE "BEAR CREEK DEVELOPMENT") LOCATED WITHIN THE CITY; AUTHORIZING THE EXECUTION OF THE INTERLOCAL AGREEMENT AND MAKING FINDINGS RELATING TO THE SUBJECT

* * *

WHEREAS, the entire corporate territory of the City is located within Collin County and the City is a constituent city of Collin County; and

WHEREAS, the City Council of the City, on June 3, 2004, adopted Resolution No. 2004-06-1, defined herein as the "Plan Resolution," in which it adopted its Modernization and Development Plan for the City, herein defined as the "Plan"; and

WHEREAS, the Plan Resolution and the Plan require and contemplate that the County and the City will enter into an Interlocal Agreement as an essential part of the Plan; and

WHEREAS, the Commissioners Court has determined that the Plan and the Interlocal Agreement are favorable to the County and that it is in the best interests of the County that it join the City in implementing the Plan by authorizing the Interlocal Agreement; and

WHEREAS, the meeting at which this Order is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended; therefore

BE IT ORDERED BY THE COMMISSIONERS COURT OF COLLIN COUNTY:

Section 1. The findings recited in the preambles hereto are hereby incorporated herein as the official findings of the Commissioners Court.

Section 2. The Commissioners Court hereby approves and authorizes the Interlocal Agreement in substantially the form and substance attached hereto and incorporated herein by this reference. The County Judge is hereby authorized and directed to execute such agreement on behalf of Collin County. The County Clerk is hereby authorized and directed to attest to such signature and to affix the seal of the County to such document.

Section 3. This Order shall take effect immediately upon its passage.

PASSED AND ADOPTED on the _____ day of _____, 2004.

County Judge, Collin County

ATTEST:

County Clerk

[SEAL]

CITY/COUNTY INTERLOCAL AGREEMENT

between

THE CITY OF LAVON, TEXAS

and

COLLIN COUNTY, TEXAS

Dated September 30, 2004

Final City/County Agenda Document

CITY/COUNTY INTERLOCAL AGREEMENT

This **INTERLOCAL AGREEMENT** (the or this "Agreement"), between the **CITY OF LAVON, TEXAS** (the "City"), a duly incorporated municipality and city of the State of Texas, and **COLLIN COUNTY, TEXAS**, a duly organized and operating County of the State of Texas (the "County");

WITNESSETH:

WHEREAS, the entire corporate territory of the City is located within the County and the City is a constituent City of the County; and

WHEREAS, the City Council of the City, on June 3, 2004, adopted Resolution No. 2004-06-1, defined herein as the "Plan Resolution," in which it adopted its Modernization and Development Plan for the City, herein defined as the "Plan"; and

WHEREAS, the Plan Resolution and the Plan require and contemplate that the City and the County will enter into this Agreement as an essential part of the Plan;

WHEREAS, the Plan recognizes that substantial residential, commercial, manufacturing, and related development within a municipality located in the County, while desirable and welcomed, can place structural and economic pressures for improved and enhanced access roads to the municipality; and

WHEREAS, the Plan requires the Developer to purchase the Bonds for the purposes, among others, of providing the County Access Road Funds to the County in order to assist the County in making the County Access Road Improvements without any requirement of reimbursement or repayment by the County; and

WHEREAS, the City, as a part of the Plan, has requested the County to consider authorizing the creation of a Fresh Water Supply District pursuant to Chapter 53, Texas Water Code, as amended, and other applicable provisions of Texas law, with boundaries coterminous with the boundaries of the Heritage Development (formerly known as the "Bear Creek Development"), in order to enable the District, under agreement with the City, to operate and maintain the newly constructed Heritage Sanitary Sewage Collection System (formerly known as the "Bear Creek Sanitary Sewage Collection System") and, potentially, the Heritage Water Supply and Distribution System (formerly known as the "Bear Creek Water Supply and Distribution System"), and to pay the start-up and on-going operating costs of such facilities until the City desires to assume such operations directly; and

WHEREAS, the Commissioners Court has determined that the Plan is favorable to the County and that it is in the best interests of the County that it join the City and the Developer in implementing the Plan to the extent provided herein; and

WHEREAS, the County Access Road Improvements are necessary for access to and from the Heritage Development and to accommodate increased traffic flow on county roads and highways adjacent to the Heritage Development;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth, the City and the County, pursuant to the authority granted in the Interlocal Cooperation Act, Chapter 791, Government Code, as amended, hereby contract, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions.

(a) Subject to subsection (b) of this Section, all capitalized words and terms that are used herein, including in the preambles hereto, and that are included as defined terms in Section 1.01 of the Plan Resolution are incorporated herein and made a part hereof for all purposes, and such words shall have the same meaning and effect as though restated and copied herein in their entirety.

(b) Unless otherwise expressly provided or unless the context clearly requires otherwise in this Agreement, the following terms shall have the meanings specified below:

County Access Road Improvements - mean (i) access road improvements located adjacent to the Heritage Development that are jointly approved by the City, the County, and the Developer and that are to be provided by the County with \$1,000,000 of the County Access Road Funds, and (ii) improved access to the Heritage Development to be provided by the County and the Texas Department of Transportation ("TexDOT"), an agency of the State of Texas by improving, upgrading, and/or widening State Highways 205 and/or 78, with an additional \$1,000,000 of County Access Road Funds to be provided to the County to pay a portion of its costs of such improvements within 1 mile of the Heritage Development unless other locations are approved by the City and the Developer.

County Access Road Funds - mean an aggregate amount of \$2,000,000 of the proceeds of the Series 2004A Bonds and/or the Series 2004B Bonds required by the Plan Resolution to be set aside for the purposes of aiding the County in providing the County Access Road Improvements and of honoring the City's obligations under this Agreement.

Heritage Development - means the area defined in the Plan Resolution as the "Development Land" in which the Heritage Road System, excluding the County Access Improvements, will be installed and constructed.

Heritage Road System - means the "Bear Creek Road System," as defined in the Plan Resolution.

ARTICLE II

IMPLEMENTATION OF PLAN

Section 2.01. City Agreement to Implement the Plan.

Subject to the pre-conditions and the requirements of the City in the Plan Resolution, the City agrees to proceed, as promptly as practicable, with the implementation of the Plan.

Section 2.02. County Approval of the Plan.

The County approves and accepts the Plan and agrees to cooperate with the City in the implementation thereof.

ARTICLE III

COUNTY ACCESS ROAD IMPROVEMENTS AND FUNDS

Section 3.01. County Access Road Funds.

(a) The City agrees to include within the purposes for which the Bonds are to be issued the provision of the County Access Road Improvements, and to include the County Access Road Funds as a portion of the aggregate principal amount of the Bonds.

(b) The City agrees to tender Bonds to the Developer, beginning in the year 2007, for purchase in accordance with the Bond Purchase Agreement in the amounts certified as needed by the County for the purpose of providing the County Access Road Improvements.

(c) When and as the Developer purchases Bonds for this purpose, the funds shall be paid to the County against certification by the County's chief financial officer that such funds are needed by the County to pay for County Access Road Improvements in accordance with this Agreement.

(d) The Developer will not be obligated to purchase Bonds for the purpose of providing funds for the projects described in the definition of the "County Access Road Improvements" unless the County and/or TexDOT is ready to award, or has awarded, a contract for the purpose of making such improvements.

Section 3.02. Designation of County Access Road Locations.

The City and the County agree that (a) the location of the access roads that are described in clause (i) of the definition of "County Access Road Improvements" shall be approved by each of the City, the County, and the Developer, and (b) the location of any projects described in clause (ii) of the definition of "County Access Road Improvements" that are not located within a 1 mile radius of the Heritage Development shall be approved by each of the City and the Developer. The City and the County agree that the Developer shall be a third-party beneficiary of this Agreement, including, but not limited to, this Section 3.02, and this Agreement shall be deemed to be made and entered into on behalf of the Developer.

ARTICLE IV
CREATION OF DISTRICT

Section 4.01. Receipt of Petition to Create.

The County agrees that, upon receipt by it of the documentation that is required by law to authorize the creation of the District, the County will proceed expeditiously toward the creation thereof in accordance with the provisions of applicable law.

Section 4.02. Disclaimer of Liabilities.

By taking action to authorize the creation of the District, the County does not assume or agree to be bound by, and expressly disclaims, any actions, proceedings, undertakings, contracts, or other liabilities or obligations, in tort, contract or otherwise, of any nature or kind that may be assumed by or imposed upon the District, the City, or the Developer by contract or by operation of law.

ARTICLE V
GENERAL PROVISIONS

Section 5.01. Parties in Interest.

This Agreement shall be for the sole and exclusive benefit of the City, the County, the Developer, and the owners or holders of the Bonds from time to time, and shall not be construed to confer any benefit or right upon any other parties.

Section 5.02. Effective Date.

(a) The effective date of this Agreement shall be the date of its execution, and shall be valid and enforceable in accordance with its terms on and after that date.

(b) Unless affirmatively canceled by the County or the City by official action taken at the close of each twelve-month period after the effective date hereof, this Agreement shall remain in effect until terminated by one of the parties hereto. In any event, once County Access Road Funds are provided to the County by the Developer and the City for the purposes hereof, this Agreement shall be and remain in effect until all of such funds have been expended for the purpose of providing the County Access Road Improvements for which the they were provided.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, all as of September 30, 2004.

ATTEST:

By: Rosa Howell
City Secretary

CITY OF LAVON


By: John R. Parker
Mayor

APPROVED AS TO FORM:

By: Andy Messer
City Attorney

ATTEST:

By: Brenda R. Rabe
County Clerk



COLLIN COUNTY

By: Ken Davis
County Judge